

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

TANGALA CARTER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	C.A. NO. 1:19-cv-588
	§	
	§	
CALIFORNIA GRILL, LLC d/b/a	§	
FOXY'S CABARET	§	
	§	JURY DEMANDED
	§	
Defendant.	§	

**STATEMENT OF FACTS**

Plaintiff, Tangala Carter, submits the following statement of facts in support of her Response in Opposition to Defendant's Motion for Summary Judgment.

1. The following paragraphs 2-20 are Ms. Carter's testimony submitted through her Declaration attached as Exhibit 1 to Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment. The numbering of the paragraphs herein is the same as the numbering of the paragraphs in Ms. Carter's Declaration.

2. Ms. Carter was hired by Foxy's Cabaret in June 2017 as a waitress. Exh. 1 at ¶2.

**A. Employees using the word "nigga"**

3. Soon after Ms. Carter began working at Foxy's, she began hearing employees using the word "nigga" on the job. Exh. 1 at ¶3. The first time she heard that was when three waitresses, all of whom are white, were singing along with a song that our DJ was playing that had the word "nigga" in it. She then noticed that white employees use the word "nigga" at Foxy's every day, generally to address or refer to a Black employee or customer. Exh. 1 at ¶3.

4. In Ms. Carter's first month of employment at Foxy's, one of the managers, Taylor Ratcliff, who is white, came up to her and said "what's up nigga?" Exh. 1 at ¶4. Ms. Carter was shocked, and told Mr. Ratcliff that it made her feel uncomfortable for him to use that word. Exh. 1 at ¶4. He said he was just kidding around, so Ms. Carter told him "well, you know that's just not okay with me. I'm not okay with you using that type of language towards me." Exh. 1 at ¶4. Taylor's response was: "whatever." After that conversation, Mr. Ratcliff began using the word "nigga" around Ms. Carter or toward her during every shift when they worked together, which was most of Ms. Carter's shifts. Exh. 1 at ¶4. He would still greet her by saying "what's up, my nigga" and using the word "nigga" toward her constantly. Exh. 1 at ¶4.

5. Ashley, one of the white waitresses, also used the word "nigga" frequently. Exh. 1 at ¶5. In or around October 2017, Ms. Carter told Ashley that her using the word "nigga" so much made her feel uncomfortable. Exh. 1 at ¶5. Ms. Carter explained to her that "that word coming from, you know, people that aren't African American is offensive." Exh. 1 at ¶5. When Ashley told her that she uses the word around her Black friends, Ms. Carter told her "that's what you do with your friends, but around me, especially at work, I don't want to hear it coming from anybody really." Exh. 1 at ¶5. After that, she made it a point to say the word "nigga" around Ms. Carter. If she was greeting somebody else, speaking to someone, or explaining something to somebody, and Ms. Carter was close by, she would use that word. Exh. 1 at ¶ After Ms. Carter talked to Ashley about her use of the word "nigga," Ms. Carter told one of the managers, Dan, that she did not like for her to use that word around her at work. Exh. 1 at ¶5. Dan responded: "oh - I'll talk to her." Exh. 1 at ¶5. After Ms. Carter spoke with Dan, Ashley continued using the word "nigga" around her, even more frequently than she had before. Exh. 1 at ¶5. She used

it as much as she could - the majority of the time when she saw Ms. Carter at work, she would use that word toward her, both while singing along with songs and while talking to her. Exh. 1 at ¶5.

6. Erica, another white waitress, also used the word “nigga” just about every time she worked with Ms. Carter. Exh. 1 at ¶6. Around the same time that Ms. Carter talked to Dan about Ashley using the word “nigga,” she told Dan that Erica was using the word “nigga” toward her as well, and she did not like it. Exh. 1 at ¶6. Ms. Carter told him that she did not feel comfortable with Erica’s “obsessive” use of that word. Exh. 1 at ¶6. Erica continued using the word “nigga” around Ms. Carter and toward her after she reported it to Dan. Exh. 1 at ¶6.

7. The constant use of racial slurs at Foxy’s made it difficult for Ms. Carter to do her job. Exh. 1 at ¶7. Ms. Carter felt uncomfortable, sad, and depressed at work, and that made it harder for her to be good at her job, because being a server required her to have a good attitude and to be pleasant and fun. Exh. 1 at ¶7. Ms. Carter did not want to speak with or be close to the managers and other employees who used racially derogatory language. Exh. 1 at ¶7. Much of the work Ms. Carter did at Foxy’s required cooperation with other employees, but it was difficult to work cooperatively with people who used racial slurs. Exh. 1 at ¶7.

8. Shortly after Ms. Carter began working at Foxy’s, she also noticed that Black employees were made to clean chairs and tables, but white employees were not. Exh. 1 at ¶8. White employees were permitted to sit around and take breaks and drink, whereas Black employees were not. Exh. 1 at ¶8. On some shifts, Ms. Carter was the only Black employee who worked behind the bar, and she got asked to clean up after the white employees who worked behind the bar, and those employees were not required to clean up after themselves. Exh. 1 at

¶8. Ms. Carter and the other Black waitress were made to sit and wipe candle glasses down one by one and clean chairs while the white waitresses were making money from tips, or sitting down drinking with customers. Exh. 1 at ¶8.

**B. Foxy's lack of discrimination policy or complaint procedure**

9. During the time Ms. Carter worked at Foxy's, she was not made aware of any policy at Foxy's that prohibited racial harassment or discrimination. Exh. 1 at ¶9. Though Ms. Carter signed some initial paperwork when she was first hired, such as a Credit Card Policy, a Cash Handling Policy, and a document explaining that Foxy's was a workers' compensation non-subscriber, she was not given anything that discussed any policy about racial harassment or discrimination, or indicated what she should do if she believed she was being harassed based on her race. Exh. 1 at ¶9. Foxy's did not have an HR person on-site; nor was Ms. Carter told of any way to contact anybody in human resources. Exh. 1 at ¶9.

**C. Complaint to GM Tommy Perkins, and the retaliation that followed**

10. On or around November 4, 2017, Ms. Carter spoke with Tommy Perkins and told him that that she was not comfortable with the word "nigga" being used toward her so much, and with the difference in treatment between the white employees and black employees. Exh. 1 at ¶10. Mr. Perkins was the General Manager of Foxy's, and so was the highest level manager in the establishment. Exh. 1 at ¶10. Ms. Carter told Mr. Perkins that she had observed that the white employees were treated much better than the black employees, given easier job duties and being talked to less harshly than the black employees. Exh. 1 at ¶10. She also told him she felt that something was not right with the difference in treatment. Exh. 1 at ¶10.

11. Approximately three days after Ms. Carter's conversation with Mr. Perkins, Ms. Carter's work hours were reduced. Exh. 1 at ¶11. When Ms. Carter saw the new schedule, where her shifts were reduced from their usual five per week to three per week, she texted one of the managers, Dave Thomas, about her hours being cut. Exh. 1 at ¶11. However, she was not put back on her regularly scheduled shifts. Exh. 1 at ¶11. After management cut her hours, Ms. Carter was still scheduled for Mondays, but when she showed up for my next Monday shift, a different waitress was already there, and Ms. Carter was not able to do the job that she was typically assigned to do, which was working the bar. Exh. 1 at ¶11. So instead, Ms. Carter worked the floor, where she could not earn as much money as she could working at the bar. Exh. 1 at ¶11. When Ms. Carter first started working on Mondays at the bar, she could make \$300/night, and her average was probably \$200. Exh. 1 at ¶11. On the floor, though, Ms. Carter would only make approximately \$50 per night. Exh. 1 at ¶11.

12. After Ms. Carter made the report about racial discrimination to Mr. Perkins, the white employees at Foxy's began using the word "nigga" around her with even more frequency than before. Exh. 1 at ¶12. She also observed that the white employees were making special attempts to ensure that she would hear them using the word "nigga," so that they would come close to her when they were having a conversation where that word got used, or where they were singing a song with that word in it. Exh. 1 at ¶12. After Ms. Carter made the report about racial discrimination to Mr. Perkins, Ashley, Erica, and Courtney, who were all servers, began treating her differently. Exh. 1 at ¶12. They were all doing the same thing - not talking to Ms. Carter, not cooperating with Ms. Carter, and, with Ashley and Erica, when they did have to talk to her, they used the word "nigga," seemingly on purpose to upset her. Exh. 1 at ¶12.

13. After Ms. Carter made her report to Tommy Perkins, if she needed to ask Tommy a question, he'd have a mean look on his face, and sometimes would not talk to Ms. Carter at all. Exh. 1 at ¶13. If Ms. Carter tried to get his attention, he would walk by her and not talk to her. Exh. 1 at ¶13. On one occasion after she made her complaint to Mr. Perkins, he walked by her and knocked her cell phone out of her hand. Exh. 2 at 2.

14. After Ms. Carter made the complaint to Tommy Perkins, her work environment became even more difficult - the employees all made her feel unwelcome and uncomfortable. Exh. 1 at ¶14. For instance, before her report to Mr. Perkins, Ms. Carter would often ask Erica for help with coolers and pitchers, and would help her when she needed help with them too, but after Ms. Carter made the complaint, Erica would not really talk to her anymore. Exh. 1 at ¶14. She would not help Ms. Carter when she asked her for help, and she was uncommunicative and unhelpful. Exh. 1 at ¶14.

15. Taylor Ratcliffe also continued using the word "nigga" toward Ms. Carter after she spoke with Mr. Perkins. Exh. 1 at ¶15. Mr. Ratcliffe made a point of making sure that Ms. Carter could hear it when he used that word, often when he was singing or talking with someone else. Exh. 1 at ¶15. Ms. Carter also observed that Mr. Perkins heard Mr. Ratcliffe use the word "nigga" around her after she made the complaint about it. Exh. 1 at ¶15. Mr. Perkins would be standing there, and would sometimes be part of the conversation, and hear it, but he would not do anything about it. Exh. 1 at ¶15. On one occasion after Ms. Carter's report to Mr. Perkins, Erica came up to Ms. Carter when she was standing at the bar, and she was singing a song that had the "n" word in it a lot, and she sang it right up in Ms. Carter's face, in a way that was threatening. Exh. 1 at ¶15.

16. Also after Ms. Carter complained to Mr. Perkins about the racial slurs, management began preventing her from earning tips, her primary source of income at Foxy's, by refusing to allow her to wait on tables. Exh. 1 at ¶16. When Ms. Carter first started working at Foxy's, the waitresses were not assigned to specific tables - if you were available when a group came in, then you could wait on them. Exh. 1 at ¶16. However that process later changed so that when the customers came in, a waitress would already be in their section. Exh. 1 at ¶16. Management started assigning certain waitresses to people that they knew would come in and spend money, so nobody else would be able to take care of those customers. Exh. 1 at ¶16, Ms. Carter began hearing from customers that they had been told that if she or the other black waitress tried to help them, that they were to tell them they were already being taken care of. Exh. 1 at ¶16. On one occasion, Ms. Carter heard Dave, one of the managers, telling a customer, "we've already got a waitress for you. Some of the other girls, I'm not going to say that they are lazy, but this is the best waitress." Exh. 1 at ¶16. After Ms. Carter's complaint to Mr. Perkins, her table assignments decreased a lot, until she had almost no work at all. Exh. 1 at ¶16,

17. In early December 2017, Ms. Carter spoke to Dan, one of the managers, about the table assignment issue, but nothing changed after she did that. Exh. 1 at ¶17.

18. Ms. Carter filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission on December 7, 2017, concerning the racial slurs and differences in job assignments. Exh. 1 at ¶18; Exh. 2.

#### **D. Constructive termination**

19. By late December 2017, it got to the point where Ms. Carter was not being given any tables at all. Exh. 1 at ¶19. On the night of December 29, all of the customers were being

assigned to the white waitresses, and Ms. Carter did not have a single table. Exh. 1 at ¶19. Ms. Carter saw a local rapper who she knew come into the club and go up to the VIP area. Exh. 1 at ¶19. She attempted to go to the VIP area to wait on him, but when she got there, there were two security guards stationed there. Exh. 1 at ¶19. Ms. Carter told them she was going to go see if he needed something, but the guards said they could not let her through. Exh. 1 at ¶19. Then two white waitresses walked through with no problem. Exh. 1 at ¶19. Ms. Carter then went to talk to Dan, the manager who was on duty. Exh. 1 at ¶19. She told him she was ready to go, because she was not being allowed to wait on any customers. Exh. 1 at ¶19. Dan told her to go fill out a document stating that she was abandoning her job. Exh. 1 at ¶19. Ms. Carter told him that she was not abandoning her job, but she was not being allowed to work. Exh. 1 at ¶19. He told her that if she left, she would be given a write-up. Exh. 1 at ¶19. Ms. Carter did not want to be disciplined for leaving, but she could not make any money without customers to wait on, so she told Dan that she was resigning her employment with Foxy's. Exh. 1 at ¶19.

#### **E. EEOC investigation**

20. After her resignation, Ms. Carter amended her charge of discrimination that was filed with the EEOC. Exh. 1 at ¶20. Nobody from the EEOC ever spoke with her about the allegations she reported in her Charge. Exh. 1 at ¶20.

Respectfully submitted,

/s/ Kell A. Simon

Kell Simon

Texas Bar No. 24060888

THE LAW OFFICES OF KELL A. SIMON

501 North IH 35, Suite 111

Austin, Texas 78702

(512) 898-9662

(512) 368-9144 (Fax)

ATTORNEY FOR PLAINTIFF

### **CERTIFICATE OF SERVICE**

By my signature hereunder affixed, I certify that a true and correct copy of the foregoing document has been transmitted to all parties of record **via CM/ECF**, on this 13th day of November, 2020, addressed as follows:

DARRELL L. BARGER

dbarger@hartlinebarger.com

BRIAN S. RAWSON

brawson@hartlinebarger.com

STEPHANIE ROARK

sroark@hartlinebarger.com

ROY B. MCKAY

rmckay@hartlinebarger.com

HARTLINE BARGER LLP

1980 Post Oak Blvd, Suite 1800 Houston, TX 77056

(713) 951-4250

(713) 652-2419 facsimile

/s/ Kell A. Simon

Kell A. Simon